

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

**LISA BIRON,  
(BOP No. 12775-049)**

**Plaintiff,**

**V.**

**JODY UPTON, Warden,  
FMC-Carswell, et al.**

**Defendants.**

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**Civil Action No. 4:15-cv-205-O**

**ORDER DENYING MOTION TO REIMBURSE APPELLATE FILING FEE**

The Court previously dismissed all claims with prejudice under authority of 28 U.S.C. §§ 1915A and 1915(e)(2)(B) in an order and judgment entered in June 2015. Order and J. ECF Nos. 13 and 14. Plaintiff appealed, and as she was a prisoner under the provisions of the Prison Litigation Reform Act (“PLRA”) 28 U.S.C. § 1915(a)(2), the Court imposed an order assessing the applicable appellate filing fees and directed payment of those fees under authority of 28 U.S.C. § 1915(b)(1) and (2). Order ECF No. 17. Subsequently, the Fifth Circuit affirmed in part, vacated in part, and remanded the case. *Biron v. Upton, Et Al.*, No.15-10684, 2018 WL 3031427 (5th Cir. 2018).

Plaintiff has filed a motion to reimburse her appellate filing fee. Mot. Reimburse, ECF No. 26. Plaintiff contends that she is entitled to a reimbursement of the appellate filing fees collected under the PLRA, and cites to Federal Rule of Civil Procedure 54(d). Mot. Reimburse, ECF No. 26. That rule allows for costs to be awarded to a prevailing party. Filing fees are considered costs of litigation. *Lucien v. DeTella, Et Al.*, 141 F.3d 773, 775 (7th Cir. 1998) (citing 29 U.S.C. § 1920(1)); *see also* FED. R. APP. P. 39(e)(4) (fee for filing a notice of appeal is a “cost on appeal”). Federal Rule of Appellate Procedure 39 provides, however, that as to taxing costs on appeal, “if a judgment is affirmed in part, reversed in part, modified or vacated, costs are taxed only as the court orders.” FED.

R. APP. P. 39(a)(4). In resolving Plaintiff's appeal, the Fifth Circuit's judgment provided: "It is ordered and adjudged that the judgment of the District Court is affirmed, vacated, and the cause is remanded to the District Court for further proceedings in accordance with the opinion of this Court." *Biron v. Upton*, No.15-10684 (5th Cir. June 18, 2018 Judgment). The circuit did not tax costs in their judgment. Thus, Plaintiff is not entitled to reimbursement of the appellate filing fees as costs, and her motion to reimburse appellate filing fee must be denied.

It is therefore **ORDERED** that the motion to reimburse appellate filing fee (ECF No. 26) is **DENIED**.

**SO ORDERED** this 30th day of October, 2018.

  
Reed O'Connor  
UNITED STATES DISTRICT JUDGE